



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

October 29, 2003

Reply To:
Attn Of: ECO-088

Ref: 02-049-BPA

Thomas McKinney
Bonneville Power Administration (KC-7)
P.O. Box 14428
Portland, OR 97293-4428

Dear Mr. McKinney:

The Environmental Protection Agency (EPA) has completed its review of the draft Environmental Impact Statement (EIS) for the proposed **BP Cherry Point Cogeneration Project** (CEQ No. 030422) in accordance with our authorities and responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. The draft EIS has been prepared in response to a proposal to construct and operate a 720-megawatt natural gas-fired cogeneration facility in Whatcom County, Washington and interconnect the project with the Federal transmission system managed by the Bonneville Power Administration (BPA). The EIS evaluates the applicant's proposed power plant and a single transmission line alignment as well as the No Action alternative. An agency-preferred alternative is not explicitly identified in the draft EIS.

Based on our review and evaluation, we have assigned a rating of EC-2 (Environmental Concerns - Insufficient Information) to the draft EIS. This rating, and a summary of our comments, will be published in the *Federal Register*. A copy of the rating system used in conducting our review is enclosed for your reference.

Our concerns are related to the following topics:

Wetlands

The EIS should provide sufficient information to demonstrate that the applicant-proposed project represents the least environmentally damaging practicable alternative, a demonstration that is necessary before an Army Corps of Engineers permit can be issued pursuant to Section 404 of the Clean Water Act. As part of this demonstration, the EIS must show that impacts to waters of the United States, including wetlands, have been avoided, minimized, and mitigated, consistent with the analysis procedures outlined in the Section 404(b)(1) Guidelines (see 40 CFR Part 230). We recommend that the EIS be revised to include more detailed evaluation of alternatives that would avoid or reduce impacts to wetlands, comply with the requirements of the 404(b)(1) Guidelines, and demonstrate that the proposed project represents the least damaging practicable alternative.

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We are concerned with the wetland functions and values evaluation of the existing condition of the proposed mitigation sites. In reviewing the *Revised Cogeneration Project Compensatory Mitigation Plan, BP Cherry Point* (April 21, 2003), EPA finds that the functions and values of the proposed mitigation sites (CMA1 and CMA2) were rated lower than we would have rated the sites. Of particular concern was the low rating given for removing sediment, removing nutrients, removing toxic metals and recharging groundwater. Based on our field visit to the project area, EPA finds these existing wetland areas, even though they may be dominated by non-native wetland vegetation and have been ditched, still provide these functions at a high level. As a consequence, we do not believe that the mitigation planned in CMA1 and CMA2 would increase the values of these sites to the level that would offset project impacts.

We recommend that additional mitigation be developed that would adequately replace the functions and values that would be lost with the permanent filling of 30.51 acres of wetlands and the temporary loss of 4.76 acres of wetlands. This mitigation should be identified in the EIS.

Government-to-Government Consultation with Tribes

Section 2.7 of the draft EIS presents information related to communications and meetings that have taken place between the applicant and potentially affected Tribal entities. The information presented does not indicate that any consultations have taken place between the Federal government (BPA or the Corps of Engineers) and the governments of affected tribes, as directed by Executive Order (EO) 13175 (*Consultation and Coordination with Indian Tribal Governments*). While we believe that it is important that the project proponent work with affected Tribes, the Federal government has a unique trust relationship with tribes. We recommend that the BPA and the Corps of Engineers engage affected Tribal governments, pursuant to EO 13175, in the further development of the project and the EIS to ensure that the Federal government meets its obligation to consult with tribes on a government-to-government basis. Results from such consultations should be reported in the EIS.

Thank you for the opportunity to provide comments on the draft EIS. I urge you to contact Bill Ryan of my staff at (206) 553-8561 at your earliest opportunity to discuss our comments and how they might best be addressed in the EIS.

Sincerely,



Judith Leckrone Lee, Manager
Geographic Implementation Unit

Enclosure

cc: Allen Fiksdal, EFSEC
Olivia Romano, Corps of Engineers